

CHAPTER 4

INTEREST AND USURY

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ARTICLE 1 IN GENERAL

7-4-1. "Usury" defined.

The term "usury" means reserving and taking or contracting to reserve and take, either directly or indirectly, a greater sum for the use of money than the lawful interest.

(Orig. Code 1863, 2023; Code 1868, 2024; Code 1882, 2051; Civil Code 1895, 2877; Civil Code 1910, 3427; Code 1933, 57-102.)

7-4-2. Legal rate of interest; maximum rate of interest generally.

(a)(1)(A) The legal rate of interest shall be 7 percent per annum simple interest where the rate percent is not established by written contract. Notwithstanding the provisions of other laws to the contrary, except Code [Section 7-4-18](#), the parties may establish by written contract any rate of interest, expressed in simple interest terms as of the date of the evidence of the indebtedness, and charges and any manner of repayment, prepayment, or, subject to the provisions of paragraph (1) of subsection (b) of this Code section, acceleration, where the principal amount involved is more than \$3,000.00 but less than \$250,000.00 or where the lender or creditor has committed to lend, advance, or forbear with respect to any loan, advance, or forbearance to enforce the collection of more than \$3,000.00 but less than \$250,000.00.

(B) Where the principal amount is \$250,000.00 or more, or the lender or creditor has committed to lend, advance, or forbear with respect to any loan, advance, or forbearance to enforce the collection of \$250,000.00 or more, the parties may establish by written contract any rate of interest, expressed in simple interest terms or otherwise, and charges to be paid by the borrower or debtor.

(C) Nothing contained in this subsection shall be construed to prohibit the computation and collection of interest at a variable rate or on a negative amortization basis or on an equity participation basis or on an appreciation basis.

(2) Where the principal amount involved is \$3,000.00 or less, such rate shall not exceed 16 percent per annum simple interest on any loan, advance, or forbearance to enforce the collection of any sum of money unless the loan, advance, or forbearance to enforce the collection of any sum of money is made pursuant to another law.

(3) As used in this Code section, the term "interest" means a charge for the use of money computed over the term of the contract at the rate stated in the contract or precomputed at a stated rate on the scheduled principal balance or computed in any other way or any other form. Principal includes such charges to which the parties may agree under paragraph (1) of this subsection. Amounts paid or contracted to be paid as either an origination fee or discount points, or both, on any loan secured by an interest in real estate shall not be considered interest and shall not be taken into consideration in the calculation of interest and shall not be subject to rebate as provided in paragraph (1) of subsection (b) of this Code section.

(b)(1) Upon acceleration of the maturity of any loan, advance of money, or forbearance to enforce the collection of any sum of money upon which interest has been precomputed, unearned interest shall be rebated to the debtor in such amount as would result in the rate of interest earned being no greater than the rate of interest established by the original contract. In the case of a loan in which the principal and the interest for the entire term of the loan are included in the face amount of the loan and the loan is to be paid back in weekly, monthly, quarterly, semiannual, or yearly installments, with the interest and principal portions of each installment determined under the pro rata method, any such rebate shall be determined on the pro rata method.

(2) Unless stipulated in the contract, there shall be no prepayment penalty.

(c) Nothing contained in this Code section shall be construed to amend or modify the provisions of Chapter 3 of this title, the "Georgia Industrial Loan Act," Article 1 of [Chapter 1 of Title 10](#), the "Retail Installment and Home Solicitation Sales Act," Chapter 5 of this title, "The Credit Card and Credit Card Bank Act," [Chapter 22 of Title 33](#), the "Insurance Premium Finance Company Act," Part 5 of Article 3 of [Chapter 12 of Title 44](#), relating to pawnbrokers, and, except as provided in Code [Section 7-4-3](#), Article 2 of [Chapter 1 of Title 10](#), the "Motor Vehicle Sales Finance Act."

(Laws 1822, Cobb's 1851 Digest, p. 393; Laws 1845, Cobb's 1851 Digest, p. 393; Code 1863, 2022; Code 1868, 2023; Ga. L. 1873, p. 52, 2-4; Code 1873, 2050; Ga. L. 1878-79, p. 184, 3; Code 1882, 2050, 2057a; Civil Code 1895, 2876, 2886; Civil Code 1910, 3426, 3436; Code 1933, 57-101; Ga. L. 1975, p. 370, 1; Ga. L. 1979, p. 355, 1; Ga. L. 1983, p. 1146, 1; Ga. L. 1984, p. 22, 7; Ga. L. 1987, p. 268, 2; Ga. L. 1988, p. 534, 1; Ga. L. 1997, p. 143, 7.)

7-4-3. Finance charge on retail installment contracts for manufactured homes and motor vehicles subject to federal law; stating of federal provisions in contract.

(a) Notwithstanding the provisions of subsections (a) through (c) of Code [Section 10-1-33](#), any retail installment contract pertaining to:

(1) Any manufactured home with a cash sale price of more than \$3,000.00; or

(2) Any motor vehicle where the amount financed is \$5,000.00 or more

may provide for such finance charge as the parties may agree in writing.

(b)(1) Any retail installment contract pertaining to a manufactured home or any consumer loan secured by such a home shall contain the contract provisions required by subsection (c) of Section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221 (12 U.S.C. Section 1735f-7, notes).

(2) Any person violating this subsection shall be subject to the liability specified in Code [Section 7-4-5](#); but the contract or loan shall still be entitled to the benefits of the other provisions of Code [Section 7-4-2](#).

(c) As used in this Code section, the term:

(1) "Finance charge" means the amount agreed upon between the buyer and the seller to be added to the cash sale price and, if a separate charge is made therefor, the amount, if any, included for insurance and other benefits and official fees, in determining the time sale price.

(2) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of Housing and Urban Development and complies with the standards established under The National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

(3) "Retail installment contract" or "contract" means an instrument or instruments creating a purchase money security interest or any instrument evidencing an obligation secured by a purchase money security interest.

(Code 1981, 7-4-3, enacted by Ga. L. 1983, p. 1146, 2; Ga. L. 1985, p. 698, 4; Ga. L. 2004, p. 631, 7.)

7-4-3.1. Maximum interest rate on loans by insured financial institutions.

Repealed by Ga. L. 1983, p. 1146, 8, effective March 31, 1983.

7-4-4. Advertisement of rates of interest or finance charge.

(a) No person shall advertise in or through any newspaper, radio, television, letter, circular, billhead, or in any way or through any medium any rate of interest or finance charge pertaining to any consumer credit transactions other than a rate stated in simple interest terms or a rate stated in terms which would comply with the federal Truth in Lending Simplification and Reform Act, Public Law 96-221 (15 U.S.C. 57(a) and 1602, et seq.).

(b) There is no liability under this Code section on the part of any owner or personnel of any medium in which an advertisement appears or through which it is disseminated when the publisher, owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement, did not prepare the advertisement, or did not have a direct financial interest in the sale or distribution of the advertised product or service.

(c) Nothing contained in this Code section shall be construed to amend, modify, or repeal any of the provisions of Part 2 of Article 15 of [Chapter 1](#) of [Title 10](#), known as the "Fair Business Practices Act of 1975."

(Code 1981, 7-4-4, enacted by Ga. L. 1983, p. 1146, 3; Ga. L. 1984, p. 22, 7.)

7-4-5. Failure to include federal loan act provisions in retail installment loan; violating advertising restrictions.

(a) Any person who fails to comply with subsection (b) of Code [Section 7-4-3](#) or Code [Section 7-4-4](#) with respect to any person is liable to such person in an amount equal to the sum of:

(1) Any actual damage sustained by such person as a result of the failure; and

(2) Twice the amount of any interest or finance charge contracted for in connection with the transaction, except that the liability under this paragraph shall not be less than \$100.00 nor greater than \$1,000.00.

(b) Such liability may be asserted in an individual action only and may not be the subject of a class action; provided, however, this provision shall not apply to any class action pending prior to March 31, 1983.

(Code 1981, 7-4-5, enacted by Ga. L. 1983, p. 1146, 4.)

7-4-6. No limit on interest rate payable by profit corporations or persons on nonconsumer loans in excess of \$3,000.00

Reserved. Repealed by Ga. L. 1983, p. 1146, 8, effective March 31, 1983.

7-4-7. No limit on interest rate on loans of \$100,000.00 or more.

Reserved. Repealed by Ga. L. 1983, p. 1146, 8, effective March 31, 1983.

7-4-8. Commission to third person does not make lawful interest usurious.

Except as the application of this Code section is modified by Code [Section 7-3-5](#), where the lender neither takes nor contracts to take more than lawful interest, the loan is not rendered usurious by money paid or agreed to be paid others by the borrower in order to obtain the loan.

(Civil Code 1895, 2887; Civil Code 1910, 3437; Code 1933, 57-104; Ga. L. 1957, p. 331, 3.)

7-4-9. Back interest may be stipulated in contract and recovered.

Interest from date, if the debt is not punctually paid at maturity, may be recovered when so stipulated in the contract, provided interest has not already been included in the principal amount.

(Orig. Code 1863, 2025; Code 1868, 2026; Code 1873, 2052; Code 1882, 2052; Civil Code 1895, 2879; Civil Code 1910, 3429; Code 1933, 57-105.)

7-4-10. Usury forfeits entire interest; right of setoff; how forfeiture discharged; when time bars action or defense.

(a) Any person, company, or corporation violating the provisions of Code [Section 7-4-2](#) shall forfeit the entire interest so charged or taken or contracted to be reserved, charged, or taken. No further penalty or forfeiture shall be occasioned, suffered, or allowed.

(b) The amount forfeited as provided in subsection (a) of this Code section may be pleaded as a setoff in any action for the recovery of the principal sum loaned or advanced by the defendant in said action.

(c) No contrivance or arrangement between the parties to any such unlawful transaction or their privies, except an actual and full payment of the amount forfeited as provided in subsection (a) of this Code section, shall have the effect of discharging such forfeiture.

(d) No plea or action for the recovery of such forfeiture shall be barred by lapse of time shorter than one year.

(Ga. L. 1875, p. 105, 3, 4; Code 1882, 2057b, 2057c, 2057d, 2057e; Civil Code 1895, 2888, 2889, 2890, 2891; Civil Code 1910, 3438, 3439, 3440, 3441; Ga. L. 1916, p. 48, 1, 2; Code 1933, 57-112, 57-113, 57-114, 57-115.)

7-4-11. Usury is personal defense; no collection from insolvent to prejudice of others.

Usury is a personal defense; but a creditor may not collect usurious interest from an insolvent debtor to the prejudice of other creditors.

(Civil Code 1895, 2878; Civil Code 1910, 3428; Code 1933, 57-103.)

7-4-12. Interest on judgments.

(a) All judgments in this state shall bear annual interest upon the principal amount recovered at a rate equal to the prime rate as published by the Board of Governors of the Federal Reserve System, as published in statistical release H. 15 or any publication that may supersede it, on the day the judgment is entered plus 3 percent.

(b) If the judgment is rendered on a written contract or obligation providing for interest at a specified rate, the judgment shall bear interest at the rate specified in the contract or obligation.

(c) The postjudgment interest provided for in this Code section shall apply automatically to all judgments in this state and the interest shall be collectable as a part of each judgment whether or not the judgment specifically reflects the entitlement to postjudgment interest.

(d) This Code section shall apply to all civil actions filed on or after July 1, 2003.

(Laws 1845, Cobb's 1851 Digest, p. 394; Code 1863, 2027; Code 1868, 2028; Code 1873, 2054; Code 1882, 2054; Civil Code 1895, 2882; Civil Code 1910, 3432; Code 1933, 57-108; Ga. L. 1980, p. 1118, 1; Ga. L. 1986, p. 195, 1; Ga. L. 1987, p. 352, 1; Ga. L. 1989, p. 14, 7; Ga. L. 2003, p. 820, 1.)

7-4-12.1. Interest on arrearage on child support.

(a) All awards of child support expressed in monetary amounts shall accrue interest at the rate of 7 percent per annum commencing 30 days from the day such award or payment is due. This Code section shall apply to all awards, court orders, decrees, and judgments rendered pursuant to [Title 19](#). It shall not be necessary for the party to whom the child support is due to

reduce any such award to judgment in order to recover such interest. The court shall have discretion in applying or waiving past due interest. In determining whether to apply, waive, or reduce the amount of interest owed, the Court shall consider whether:

- (1) Good cause existed for the nonpayment of the child support;
- (2) Payment of the interest would result in substantial and unreasonable hardship for the parent owing the interest;
- (3) Applying, waiving, or reducing the interest would enhance or detract from the parent's current ability to pay child support, including the consideration of the regularity of payments made for current child support of those dependents for whom support is owed; and
- (4) The waiver or reduction of interest would result in substantial and unreasonable hardship to the parent to whom interest is owed.

(b) This Code section shall not be construed to abrogate the authority of a IV-D agency to waive, reduce, or negotiate a settlement of unreimbursed public assistance in accordance with subsection (b) of Code [Section 19-11-5](#).

(Code 1981, 7-4-12.1, enacted by Ga. L. 1996, p. 649, 1; Ga. L. 2005, p. 224, 3/HB 221; Ga. L. 2006, p. 583, 2/SB 382.)

7-4-13. Law of place of contract governs interest unless otherwise provided.

Every contract shall bear interest according to the law of the place of the contract at the time of the contract, unless upon its face it shall be apparent that the intention of the parties was to adopt the law of another forum; in this case the law of that forum shall govern.

(Orig. Code 1863, 2026; Code 1868, 2027; Code 1873, 2053; Code 1882, 2053; Civil Code 1895, 2880; Civil Code 1910, 3430; Code 1933, 57-106.)

7-4-14. Interest runs from default unless otherwise agreed; when demand necessary.

In the absence of an agreement to the contrary, interest shall not run until default; hence, where money can be recovered because of mistake or other like reasons, no interest shall run until after demand and refusal to refund.

(Civil Code 1895, 2881; Civil Code 1910, 3431; Code 1933, 57-107.)

7-4-15. When interest runs on liquidated demands; promissory notes payable on demand.

All liquidated demands, where by agreement or otherwise the sum to be paid is fixed or certain, bear interest from the time the party shall become liable and bound to pay them; if payable on demand, they shall bear interest from the time of the demand. In case of promissory notes payable on demand, the law presumes a demand instantly and gives interest from date.

(Laws 1799, Cobb's 1851 Digest, p. 405; Ga. L. 1858, p. 90, 1; Code 1863, 2029; Code 1868, 2030; Code 1873, 2056; Code 1882, 2056; Civil Code 1895, 2884; Civil Code 1910, 3434; Code 1933, 57-110.)

7-4-16. When interest runs on commercial accounts; maximum interest rate on commercial accounts.

Unless otherwise provided in writing signed by the obligor, a commercial account becomes due and payable upon the date a statement of the account is rendered to the obligor. The owner of a commercial account may charge interest on that portion of a commercial account which has been due and payable for 30 days or more at a rate not in excess of 1 1/2 percent per month calculated on the amount owed from the date upon which it became due and payable until paid. "Commercial account" means an obligation for the payment of money arising out of a transaction to sell or furnish, or the sale of, or furnishing of, goods or services other than a "retail installment transaction" as defined in paragraph (10) of subsection (a) of Code [Section 10-1-2](#).

(Ga. L. 1858, p. 90, 1; Code 1863, 2030; Code 1868, 2031; Ga. L. 1873, p. 22, 1; Code 1873, 2057; Code 1882, 2057; Civil Code 1895, 2885; Civil Code 1910, 3435; Code 1933, 57-111; Ga. L. 1980, p. 514, 1.)

7-4-17. Payment applied first to interest; no interest on unpaid interest; exceptions.

When a payment is made upon any debt, it shall be applied first to the discharge of any interest due at the time, and the balance, if any, shall be applied to the reduction of the principal. If the payment does not extinguish the interest then due, no interest shall be calculated on such balance of interest and interest shall be calculated only on the principal amount up to the time of the next payment. Notwithstanding the foregoing restrictions against charging interest on unpaid interest:

(1) On loans having first priority on real estate and on loans secured by the pledge or assignment of instruments evidencing loans having first priority on real estate, the parties by written contract may lawfully agree that unpaid interest when due shall be added to the unpaid principal balance of the indebtedness and that the increased principal balance of the indebtedness bear interest pursuant to the terms of the contract; and

(2) On loans secured by real estate or secured by real estate and other collateral, the parties by written contract may lawfully agree that, in the event of bankruptcy, the lender or creditor may include interest on its claim pursuant to the terms of the contract.

(Orig. Code 1863, 2028; Code 1868, 2029; Code 1873, 2055; Code 1882, 2055; Civil Code 1895, 2883; Civil Code 1910, 3433; Code 1933, 57-109; Ga. L. 1982, p. 420, 1, 2; Ga. L. 1984, p. 949, 6; Ga. L. 1995, p. 956, 1.)

7-4-17.1. Refunds from loans on which interest is calculated under the add-on interest method and which are paid off prior to maturity.

Repealed by Ga. L. 1983, p. 1146, 8, effective March 31, 1983.

7-4-18. Criminal penalty for excessive interest.

(a) Any person, company, or corporation who shall reserve, charge, or take for any loan or advance of money, or forbearance to enforce the collection of any sum of money, any rate of interest greater than 5 percent per month, either directly or indirectly, by way of commission for advances, discount, exchange, or the purchase of salary or wages; by notarial or other fees; or by any contract, contrivance, or device whatsoever shall be guilty of a misdemeanor; provided, however, that regularly licensed pawnbrokers, as defined in Code [Section 44-12-130](#), are limited in the amount of interest they may charge only by the limitations set forth in Code [Section 44-12-131](#).

(b) This Code section shall not be construed as repealing or impairing the usury laws now existing but shall be construed as being cumulative thereof.

(c) Nothing contained in Code [Section 7-4-2](#) or [7-4-3](#) shall be construed to amend or modify the provisions of this Code section.

(Ga. L. 1908, p. 83, 1, 2; Civil Code 1910, 3444, 3445; Penal Code 1910, 700; Code 1933, 57-117, 57-9901; Ga. L. 1983, p. 1146, 5; Ga. L. 2000, p. 1526, 1.)

7-4-19. Civil action to enforce chapter.

The Department of Banking and Finance or the Industrial Loan Commissioner may bring an appropriate civil action to enforce any provision of this chapter whether by injunction or otherwise in any superior court of this state having jurisdiction over one or more defendants. In the case of a loan made pursuant to this chapter by a licensee under Chapter 3 of this title, relating to industrial loans, such action shall be brought by the Industrial Loan Commissioner. In

the case of any other loan, the action shall be brought by the Department of Banking and Finance.

(Code 1981, 7-4-19, enacted by Ga. L. 1983, p. 1146, 6; Ga. L. 1989, p. 14, 7.)

7-4-20. Election to forgo application of federal usury laws.

In enacting Code [Sections 7-4-2](#) through [7-4-5](#), the General Assembly exercises its prerogative:

(1) Under subsection (b)(2) of Section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221 (12 U.S.C. Section 1735f-7, notes), and declares that the provisions of subsection (a)(1) of Section 501 do not apply to loans, mortgages, credit sales, and advances made in the State of Georgia on and after March 31, 1983; and

(2) Under Section 512 of that act, Public Law 96-221 (12 U.S.C. Section 86a, notes), and declares that the provisions which preempt the law of this state in Section 511 of that act do not apply to business and agricultural loans in amounts of \$1,000.00 or more made in the State of Georgia on and after March 31, 1983.

(Code 1981, 7-4-20, enacted by Ga. L. 1983, p. 1146, 7; Ga. L. 2004, p. 631, 7.)

7-4-21. Class action barred on claims for violation of interest laws on loans secured by real estate.

A claim of violation on any loan secured by an interest in real estate may be asserted in an individual action only and may not be the subject of a class action under Code [Section 9-11-23](#) or any other provisions of law.

Nothing contained in this Code section shall be construed to affect any class action which was pending in any court of this state, including any United States courts, on February 15, 1983, as to the parties to and subject matter then before such court.

(Code 1981, 7-4-21, enacted by Ga. L. 1983, p. 1316, 1; Ga. L. 1984, p. 22, 7.)

ARTICLE 2
RESIDENTIAL SECOND MORTGAGES

7-4-30 through 7-4-36.

Reserved. Repealed by Ga. L. 1983, p. 1146, 8, effective March 31, 1983.